...**(समय की घंटी)**... पिछले वर्ष इतना बड़ा नुकसान हुआ, उसमें केवल इंक्वायरी कमेटी बिठा दी गयी।...**(समय की घंटी)**...

श्री उपसभापति: समय हो गया। ...**(व्यवधान)**... Mr. Anwar, it is not going on record.

श्री तारिक अनवर: *

MR. DEPUTY CHAIRMAN: Hon. Members, I have to inform the House that the Constitution (109th) Amendment Bill is being taken up in the House today for consideration and passing. The Bill has to be passed by special majority under article 368 of the Constitution of India. To enable the Members to be present at the time of division on various stages of the Bill, it is informed that the first division on the Bill will be called at around 2.05 p.m. Now, the Legislative Business. The Judges (Declaration of Assets and Liabilities) Bill, 2009. Shri M. Veerappa Moily.

GOVERNMENT BILLS

The Judges (Declaration of Assets and Liabilities) Bill, 2009

SHRIMATI BRINDA KARAT (West Bengal): Sir, I have given a notice. *(Interruptions)*

MR. DEPUTY CHAIRMAN: Yes. Yes. ...*(Interruptions)*... Mr. Minister, in introduction, there are notices for objection; notices to oppose the introduction of the Bill. ...*(Interruptions)*... The Leader of Opposition, Shri Arun Jaitley.

THE LEADER OF OPPOSITION (SHRI ARUN JAITLEY): Sir, the hon. Law Minister has sought to introduce the Judges (Declaration of Assets and Liabilities) Bill, 2009. Sir, I have an objection to the introduction of this Bill. I am conscious of the fact that the introduction of the Bill can be opposed primarily on two grounds, either on the ground of lack of legislative competence or on violation of the Constitution; and the Bill itself being ultra-vires. I have particular objection to clause 6 of the Bill. Sir, clause 6 of the Bill specifically states, and, I am reading clause 6, "notwithstanding anything contained in any other law for the time being in force, a declaration made by a Judge to a competent authority shall not be made public or disclosed, and, shall not be called for, or, put into question by any citizen, court or authority, and, save as provided by sub-section 2, no Judge shall be subjected to any enquiry or query in relation to the contents of the declaration by any person."

Sir, earlier, the issue had come up where candidates contesting elections either for Parliament or Assembly were required to file a declaration with regard to their antecedents, criminal cases and education as also their assets and liabilities. The law was clearly laid down by the Supreme Court and the law was based on the understanding of article 19(1)(a) of the Constitution of India, and, on the strength of Freedom of Expression which they said, also includes the Right to Information as far as people are concerned, all persons desirous of

*Not recorded.

contesting elections were told, "not only you have to file an affidavit making such a disclosure but it is also an inherent content of article 19(1)(a) and the Right to Information which is included there, that assets, the declaration of which is made, should be made public." Now, since this has been made in relation to a constitutional guarantee in the Constitution itself, we now find that this Bill contains a provision that article 19(1)(a) has been applied to any person anywhere in the country, who is desirous of contesting an election, and, his assets are to be made public.

But, a different interpretation will now have to be given that when it comes to assets of Judges, the same cannot be made public. Now, Sir, we can't have two article 19 (1) (a), one for the entire body of persons desirous of contesting elections, who are desirous of holding a public office and people have a right to know what their assets are; and the other for those who are already there in public offices and high offices in the judicial institution, but people have no right to know what their assets are. Now, this dual interpretation of article 19 (1) (a) cannot be sustained. Sir, I am, therefore, submitting before this House that clause 6 should be reconsidered before its introduction because clause 6 clearly will be violating 19 (1) (a) as laid down by the Supreme Court itself. Sir, I am given to understand from the media reports that this is the first time in history that before introduction in Parliament the Bill has been circulated to the judicial institution itself, and it is on their objection that this clause 6 has been introduced. Now, Sir, legislative competence is of Parliament. Parliament does not abdicate law-making function to any other institution however honourable or respectable or competent that institution may be. Will the hon. Minister clarify this also?

SHRI M.V. MYSURA REDDY (Andhra Pradesh): Sir, my objection is also regarding clause 6 of the Bill.

MR. DEPUTY CHAIRMAN: You have to speak only on legislative competence. ...*(Interruptions)*...

SHRI M.V. MYSURA REDDY: To substantiate the argument of Arun Jaitley, I am quoting the Judgement of Civil Appeal No. 7178 of 2001, Union of India *vs* Association For Democratic Reforms and Another. It says, "Moreover, even the gazetted officers in all Government services are required to disclose their assets and thereafter to furnish the detail of any acquisition of property annually". Well, in the democratic form of Government, Sir, MPs or MLAs, who are serving for the public, are having higher stature. The Judges are also performing the same duty. That is why I am opposing clause 6 of this Bill. Therefore, I request the Minister to re-consider this.

SHRIMATI BRINDA KARAT: Sir, in addition to the points, or, further to the points raised by the hon. Members in this House in objection to the Bill, I strongly object to the introduction of this Bill on grounds that it violates the very basic feature of the Constitution of India which is

equality of all citizens before law. This Bill promotes a class of citizens, namely, Judges, who are put above that basic feature of the Constitution and, therefore, clause 6 is ultra vires of the Constitution. I would request the Government to withdraw this Bill at this stage to re-look clause 6. Please do not forget that we have already got a law, namely, the Right to Information Act, which was adopted unanimously by this very Parliament. And, now you want to bring a Bill which is going to be violative of something which is already there on the statute books. So, please withdraw this.

SHRIMATI JAYANTHI NATARAJAN (Tamil Nadu): Sir, I too want to raise the same issue regarding clause 6 on the ground that it may or it will violate the Right to Information Act which is so vitally welcomed by the people. I would, therefore, request the House and the hon. Minister whether they can consider all the objections raised and refer the entire Bill to the Standing Committee for further discussion. ...*(Interruptions)*...

SHRI RAJEEV SHUKLA (Maharashtra): Sir, I also ... *(Interruptions)* ...

MR. DEPUTY CHAIRMAN: Okay, okay. Shri Ram Jethmalani please.

SHRI RAM JETHMALANI (Nominated): Sir, my objection to this Bill is that it violates the basic features of the Constitution. Under the Keshvanand doctrine, this Bill is totally ultra vires. The independence of the Judiciary is the basic feature of our Constitution. Nobody can deny it, whichever party he belongs to. Now, Sir, what this Bill does is, it creates a suspicion in the public mind that the Judiciary is seeking favours from the Executive. The favour being that you put us on a higher pedestal than any other public servant in this country. Don't disclose our assets. Let other peoples' assets be disclosed, but not ours. Now, this privileged position, which the Judges are seeking from the Executive, makes them totally subservient to the Executive. This demolishes the whole vision of our founding fathers that the independence of the Judiciary is a must. You are destroying the independence of the judiciary. This Bill is a conspiracy in corruption.

SHRI D. RAJA (Tamil Nadu): Sir, I oppose this Bill at the introduction stage for the following reason.

Clause 6 of the Bill is, in fact, ultra vires of the Article 19(1)(a) of the Constitution. The Bill treats judges unequally. And it creates two classes. Judges belong to one class, and all other citizens belong to another class. This cannot be accepted. Nobody is above law. We have the Right to Information Act and judges must be covered by this Act. I don't think this Bill will be tenable. Therefore, I oppose this Bill at the introduction stage.

MR. DEPUTY CHAIRMAN: Several hon. Members have opposed the introduction of the Bill. But there is a ruling of this House. It says, "Now I do not want to take the responsibility of giving a ruling, because there is a ruling already. On 9 September 1947, during the discussion over a

particular Bill, a point was raised whether the Bill was ultra vires. Mr. Speaker observed that the usual practice with the Chair was not to take upon itself the responsibility of deciding whether any particular Bill was ultra vires or not to kill any Bill on that ground. So, I leave it to the House to decide whether it is *ultra vires* or not."

This is the ruling of the Rajya Sabha. It is the Rajya Sabha debate of 14.12.1956. *(Interruptions)*

I will ask the hon. Minister. *(Interruptions)* I have read the ruling. If the hon. Minister is not going to introduce it, I have no objection. If the hon. Minister wants to introduce it, I have to allow him to introduce it, because of the ruling. *(Interruptions)*

DR. V. MAITREYAN (Tamil Nadu): Sir, the House should decide it. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: The House should reject it at...*(Interruptions)*...

SHRI S.S. AHLUWALIA (Jharkhand): Sir, your ruling says that you will take the consent of the House whether it should be introduced or not. ...*(Interruptions)*...

SHRI SITARAM YECHURY (West Bengal): Sir, the interpretation of the rule is that whether the Bill should be introduced or not will be decided by the House. So, first you take that decision. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: At the time of the discussion, the Bill can be rejected. ...*(Interruptions)*...

SHRI SITARAM YECHURY: No, Sir. It is at the time of introduction. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Mr. Minister, you can reply. ...*(Interruptions)*... The hon. Minister will be replying to the objections raised here. ...*(Interruptions)*... I agree. ...*(Interruptions)*...

SHRI SITARAM YECHURY: Sir, the ruling is that the House will decide whether it can be introduced or not. That is the ruling. You must stick to that ruling. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Now let the hon. Minister reply.

THE MINISTER OF LAW AND JUSTICE (SHRI M. VEERAPPA MOILY): Sir, a number of distinguished Members of this House have raised objections to the Bill before its introduction. I have only a few questions to answer. I do not want to go into the merit and entire contents of the Bill.

Hon. Leader of the Opposition, Shri Arun Jaitleyji, has said that before it is intended to be introduced on the floor of the House, it was circulated among judges. I would like to reaffirm that we have not circulated this among the judiciary. We have straightaway introduced it here. Maybe some perceptions have been created by the Press. But I must tell you that this matter

has been debated in this House and outside the House. The question of accountability of the higher judiciary also came up. And the matter also went up to the Delhi High Court. Ultimately, it is found that there is no law whatsoever which says that judges of the High Courts and the Supreme Court should declare their assets and liabilities.

In fact, there is no law as on today. Of course, there is an internal mechanism created by the Full Bench of the Supreme Court in their Second Resolution. The First Resolution is on the values of judicial system. Next one is, on the declaration of assets. But, it is within their own mechanism. Many a time, our hon. Member and the great jurist, Shri Ram Jethmalani, has rightly said that we find lot of corruption in many places in the judiciary. We need to deal with that. But, I must tell the hon. House and take the House and Members into confidence that we can do hardly anything on this. As far as matter of removal is concerned, you have found that not a single case was processed through and found finality either in this House or that House. Of course, there is a case now pending and the hon. Chairman has constituted a committee of jurists to look into it and after their report, of course, it is left to the House to decide on the question of removal. Even the Judges Inquiry Act of 1968 does not provide for it. It only lays down practice and procedure to be followed with regard to the process of removal. It does not refer to other omissions and commissions of the Judges. I have seen it. Many files do come to us at the time of appointment of Judges and on many other occasions and the Government, as on today, is a mute spectator. We are not in a position to act upon that. Today, accountability of any public authority...*(Interruptions)*...

SHRI RAVI SHANKAR PRASAD (Bihar): Assert yourself, Mr. Law Minister. Assert yourself. ...*(Interruptions)*... It is time to assert yourself. ...*(Interruptions)*...

SHRI M. VEERAPPA MOILY: No, no. That is why, what could not be asserted for the past 60 years, I am asserting today. That's the position. This may be a small step. This may be the first step in that direction. I don't say that this is a complete, exclusive and comprehensive step. The Judges Inquiry Bill which is going to come up now will be a very comprehensive Bill. That will be the next step which we are going to take. Of course, that will be a step forward. There are many things to come and I must tell you that we are working on a roadmap for judicial reforms and we have already fixed up national consultation on that on 29th and 30th of August. Many things will have to be discussed, debated and deliberated. But, I know the limitations very well. At the same time, I must say that there is a need for a statute for declaration. Yes, making it public has its pros and cons which could be discussed in the Standing Committee. I am not now going to say or affirm or reaffirm the possibility of that. But, the Standing Committee can definitely deliberate on that. I must say one thing that unlike the other classes of people like the Civil Servants or the political executives or other executives, there is a limitation on Judges to reply when the allegations are made and they will not be in a position to pursue their petitions.

Sometimes, that may be used as an instrument to intimidate the Judges or hold them to ransom. I am just telling you that these are the things which can be debated. It's a debatable point. I don't say, it's a conclusive point. *(Interruptions)*

SHRI SITARAM YECHURY: Sir, what we were discussing was whether the Bill should be introduced or not. ...*(Interruptions)*... Now, the point is, you are getting into a debate. Mr. Deputy Chairman, Sir, I request you to let us have a debate on whether it should be introduced. Otherwise, you cannot have this sort of a statement. ...*(Interruptions)*... Let the House decide. Sir, if you are making a statement, my request would be, delete Clause 6 and then, introduce the Bill. Delete clause 6 and then introduce the Bill. *(Interruptions)*...

MR. DEPUTY CHAIRMAN: Sitaram Yechuryji, in fact, the Minister is answering some of the preliminary objections raised. When it comes to the introduction ...*(Interruptions)*...

SHRIMATI BRINDA KARAT: He is going into all the details. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Some objections were raised. The Minister is clarifying them. ...*(Interruptions)*...

SHRI SITARAM YECHURY: Sir, my point is that in the very spirit of the Minister's intervention so far, clause 6 should be removed. ...*(Interruptions)*... In the very spirit of his own intervention, clause 6 should be removed and he can introduce the Bill. ...*(Interruptions)*... You have made out the best case for removing clause 6.

SHRI M. VEERAPPA MOILY: Let me come back to the technicalities of the introduction stage. *(Interruptions)*...

SHRI RAVI SHANKAR PRASAD: Kindly see the sweeping nature of clause 6. Nobody can question it at any point of time. ...*(Interruptions)*...

SHRI M. VEERAPPA MOILY: You don't want me to speak on merit....*(Interruptions)*...

MR. DEPUTY CHAIRMAN: There is a Standing Committee. The Standing Committee can delete it. ...*(Interruptions)*... The Standing Committee can make changes. ...*(Interruptions)*...

SHRI SITARAM YECHURY: Sir, that is not mandatory on the Government. You know the Standing Committee and I know the Standing Committee. We have suggested so many changes. But they are not mandatory on the Government. ...*(Interruptions)*... Sir, one suggestion. ...*(Interruptions)*... Thank you for yielding. The hon. Minister has made out a very good case why clause 6 should not be there in the Bill. He has, so far, argued so well that clause 6 should not be there. So, in that spirit, I would request him to introduce the Bill without clause 6. You move an official amendment, then you introduce the Bill. Otherwise, you withdraw clause 6. ...*(Interruptions)*....

SHRI M. VEERAPPA MOILY: Hon. Member Sitaram Yechury's assertion is not correct. That may be a wrong perception because I have given the perceptions here. *(Interruptions)*...

SHRI SITARAM YECHURY: I am complimenting you. *(Interruptions)*...

SHRI M. VEERAPPA MOILY: No, I was just justifying. I was justifying clause 6. Now, the question is about the competency and it is not violative of article 19. In fact, Entries 77 and 28 provide for this. Entry 97 has the residual clause.

SHRIMATI BRINDA KARAT: Sir, please go in for division now. What is this?

SHRI M. VEERAPPA MOILY: Just one minute. Let me speak. In view of this, it is not ultra vires. The question is after 60 years we are making some attempts to go through this. If you do not give it the support of a statute what was done by the internal mechanism of the Supreme Court, perhaps, we would stop the first step itself. ...*(Interruptions)*... I leave it to you. ...*(Interruptions)*...

SHRI SITARAM YECHURY: Sir, the Minister knows and we all know that he is going on speaking to buy time. ...*(Interruptions)*... Sir, if you permit that, in this House, we don't want that to happen. You please put it to vote. ...*(Interruptions)*...

SHRI M. VENKAIAH NAIDU (Karnataka): Hon. Deputy Chairman, without waiting, you put it to vote. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: I have no choice. *(Interruptions)*...

SHRI M. VENKAIAH NAIDU: The Chair has recalled the earlier ruling. It is clear. *(Interruptions)*... Let us go ahead with the division. ...*(Interruptions)*...

SHRI VEERAPPA MOILY: I may be allowed to introduce the Bill. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: That is there. But I have to take the opinion of the House. You are introducing a Bill. I have to put it to vote. ...*(Interruptions)*...

SHRI M. VENKAIAH NAIDU: Yes, Sir, you put it to vote. ...*(Interruptions)*...

SHRI M. VEERAPPA MOILY: Then, we will defer the introduction of the Bill. *(Interruptions)*...

MR. DEPUTY CHAIRMAN: The introduction of the Bill is deferred. ...*(Interruptions)*...

SHRI M. VEERAPPA MOILY: Mr. Deputy Chairman, this is an important Bill. I would like to see that there is consensus among us. *(Interruptions)*...

MR. DEPUTY CHAIRMAN: You develop a consensus. *(Interruptions)*...

SHRI M. VEERAPPA MOILY: In view of that, I defer the introduction of the Bill. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: The House is adjourned to meet at 2.00 p.m.

The House then adjourned for lunch at fifty-nine minutes
past twelve of the clock.